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FOREIGN-TRADE ZONES BOARD

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EXECUTIVE SECRETARY

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October 21, 2009

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
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Re: ***Post Hearing Comments***
Foreign-Trade Zones Board Public Hearing, September 1, 2009
Regarding Applications for Subzone Authority
Dow Corning Corporation & REC Silicon
Docket #20-2009 and #22-2009 - FTZ #29 and FTZ #203

Dear Mr. McGilvray,

On behalf of MPM Silicones, LLC's ("MPM"), the comments contained herein respond to several issues raised at the above-referenced Public Hearing ("Hearing") on September 1, 2009.¹ MPM manages a special-purpose Foreign-Trade Zone ("FTZ") subzone containing the company's manufacturing and warehousing facilities located at 260 Hudson River Road, Waterford, New York. That subzone drew particular attention during the Hearing from Globe Metallurgical Inc. ("Globe"), as well as other parties (referred to herein as the "opponents"), opposed to the Dow Corning Corporation and REC Silicon FTZ Board applications.

In particular, Globe relied on various allegations related to MPM's use of its own subzone to attempt to "prove" that zone admissions of goods subject to antidumping ("AD") or countervailing duty ("CVD") orders, absent any obligation to pay the AD or CVD duty, are detrimental to the public interest. The opponents further argued at the Hearing for a change in Foreign-Trade Zones Board (referred to as "FTZ Board" or "the Board") established practice. That practice currently grants FTZ subzone applicants the

¹ In the Matter of the Administrative Review of the Application to the Foreign Trade Zone Board for Foreign Trade Zones 29 and 203; Applications for Subzone Authority; Dow Corning Corporation and REC Silicon, Case No. 20-2009 and 22-2009 (Sept. 1, 2009) ("Hearing Transcript").

Mr. Andrew McGilvray
 October 21, 2009
 Page 2

opportunity to admit merchandise subject to AD or CVD orders into a zone under privileged foreign status and to avoid AD/CVD duties upon exportation from the United States.

As discussed in detail below, Globe's allegations regarding MPM's use of its subzone are patently false. Moreover, the opponents' requested remedy, which would eliminate all AD/CVD duty-free admissions of goods into a FTZ, is both unnecessary and at odds with the regulatory framework that governs Board action. These issues are addressed in turn.

I. Globe's Allegations Concerning MPM's Use Of Its Subzone Are Patently False

Globe made several allegations regarding MPM's use of its subzone in Waterford, New York. In particular, Globe stated that:

- "MPM was an important Globe customer purchasing 18,000 tons of silicon metal from us {in 2007}."²
- "{MPM's subzone} was designed to allow MPM to replace domestic silicon metal with dumped Chinese or Russian material . . ."³
- "MPM essentially stopped buying silicon metal from Globe and replaced our domestic product with silicon metal from China. . . . MPM cut its domestic purchases to almost zero, from 18,000 tons and 12,000 tons in 2007 and 2008, despite its assurance it gave the Board that approving the application, just like Dow Corning and REC Silicon are now doing, would not affect its sourcing of U.S.-produced silicon metal."⁴
- "Eighty-five of our employees lost their job as a direct result of the loss of the MPM business."⁵

Globe's basic premise is that MPM violated 15 CFR §400.33(b), by using zone procedures to circumvent AD and CVD orders. The alleged circumvention supposedly resulted in the loss of Globe's sales to MPM of 18,000 tons per year of silicon metal by 2009. In turn, that directly resulted in the loss of 85 jobs at Globe.

Unfortunately for Globe, the facts simply prove otherwise.

² Id. at 53.

³ Id. at 53-54.

⁴ Id. at 54-55.

⁵ Id. at 55.

Mr. Andrew McGilvray
 October 21, 2009
 Page 3

First, MPM does not import merchandise subject to CVD orders. The allegations about CVD are irrelevant.

Second, in order to obtain its subzone, MPM had to demonstrate to the FTZ Board that it had no intention to circumvent the silicon metal AD order. As the Board is well aware, that allegation – raised by Globe during the MPM subzone application review process – was vetted in detail by the Board staff.⁶ MPM's subzone application proposed to replace all its current imports (customs clearances at the port) with FTZ admissions, thereby realizing estimated savings of approximately \$500,000 to \$2 million, *even if no silicon subject to an AD order was ever admitted into the subzone*.⁷ MPM submitted several written responses to the Board supporting these assertions as well as its purpose for establishing a subzone.⁸ [

] Globe's claim that MPM somehow "tricked" the Board despite the light shed on the issue(s) by Globe itself when MPM's application was still pending¹⁰ defies logic and common sense.

Third, the notion that Globe potentially lost annual sales of 18,000 tons of silicon metal as a result of MPM's subzone fails to conform with basic principles of mathematics. The Board's subzone grant of authority restricted MPM to admitting up to 10,000 metric tons of silicon metal subject to AD order per year.¹¹ Even if MPM used that entire allotment – which it did not – that would have left an additional 8,000 metric tons that MPM could have purchased from Globe. As described below, there are clearly other reasons why MPM has purchased less and less silicon metal from Globe over the last 2 years.

Fourth, Globe's inability to sell more silicon metal to MPM in 2009 – it has sold some to MPM (see below) – has nothing to do with imports of silicon metal under AD order. MPM has not purchased *any* silicon metal under AD order in 2009.¹² MPM chose to forego purchases from Globe for two reasons:

⁶ MPM Meeting with FTZ Board, January 24, 2007; Requests from FTZ Board to MPM subsequent to filing of Subzone Application, requests dated January 10, 2007, April 24, 2007, and July 9, 2007; Public Hearing on April 18, 2007 regarding Subzone Application, Docket 4-2007; Industry Survey, April 16, 2007; FTZ Board Order 1554 granting authority with restrictions, March 28, 2008.

⁷ MPM Letter to FTZ Board in response to July 9, 2007 Questions, September 10, 2007, at 7.

⁸ MPM Letters to FTZ Board in response to questions subsequent to filing of Subzone Application; April 2007 Public Hearing, April 18, 2007.

⁹ [

¹⁰ Globe Supplemental Comments of Globe Metallurgical Inc. to FTZ Board, October 22, 2007.

¹¹ Board Order # 1554 – Scope of Authority Restriction #2 – Admission of foreign-status silicon metal subject to an antidumping or countervailing duty order is limited to 10,000 metric tons per year.

¹² See Exhibit A (MPM SAP Inventory Management System Summary of 2007 - 2009 Waterford Silicon Metal Supply). [

Mr. Andrew McGilvray
 October 21, 2009
 Page 4

- (1) MPM's 2009 demand for silicon metal declined by []. MPM's annual demand for silicon metal in each of 2007 and 2008 was approximately [] metric tons.¹³ In 2009, due to the worldwide recession, MPM's demand dropped to an estimated [] metric tons;¹⁴ and
- (2) MPM's 2009 demand was met by several silicon metal suppliers with superior price and sales terms, including suppliers in [], none of which are under AD order.¹⁵ None of these shipments were admitted as foreign zone status merchandise.

Contrary to Globe's assertions, MPM has purchased approximately [] metric tons from Globe in 2009,¹⁶ and MPM did attempt to negotiate a supply agreement with Globe in 2009. In fact, [

] Given Globe's uncompetitive terms and the availability of alternative supply, MPM saw no reason to continue purchasing silicon metal from Globe in 2009.

Since approval of the FTZ subzone, MPM has purchased silicon metal from Globe within the same historical ranges as prior to approval of the subzone, with the specific volumes being dependent on the offer that is presented¹⁷. When Globe offered competitive pricing and terms, MPM purchased more from Globe; when Globe did not offer competitive pricing and terms, MPM purchased less from Globe.

¹³ Id.

¹⁴ Id. (The 2009 amount reported in Exhibit A reflects actual receipts through 10/7/2009.) MPM expects full year 2009 receipts to rise to [] metric tons.

¹⁵ Id.

¹⁶ Id.

¹⁷ MPM Letter to FTZ Board in response to post hearing FTZ Board questions, May 7, 2007, at 12; *see also* Exhibit A.

Fifth, MPM's subzone had no negative effect on the loss of jobs at Globe. For the period January through October 2009, MPM has utilized [] metric tons of imported silicon metal in its subzone.¹⁸ The reason for such low quantities is due to the collapse in demand for exported downstream products. Therefore, MPM's decision to forego purchases from Globe, and Globe's decision to layoff 85 employees, has nothing to do with MPM's subzone activity. Globe lost sales to MPM in 2009 because Globe's sales and price terms were not competitive vis-à-vis its competitors in the worldwide marketplace.

Finally, Globe's unfounded and unsupported accusations about MPM's past purchasing patterns have little to do with MPM's subzone activities. Except for the [] metric tons discussed above, MPM's imports of silicon metal in 2009 from alternative suppliers were all entered for consumption, subject to full payment of U.S. customs duties. Even with the costs incurred due to those duties, MPM purchased foreign supply because it was less expensive than Globe's product, on more favorable payment terms, equal in quality and with more reliable delivery. Therefore, Globe's attempt to undermine Dow Corning's and REC Silicon's applications based on MPM's subzone activity is entirely unfounded.

II. The Board Should Continue To Authorize The Admission Of Goods Subject To AD/CVD Orders Into Zones Under Privileged Status And Without AD/CVD Duty Payment Unless The Merchandise Enters United States Commerce For Consumption

Opponents' arguments concerning the "threat" posed by the admission of goods subject to AD/CVD orders into a FTZ are not new. Opponents are merely rehashing a debate resolved by the Board in 1991.¹⁹ At that time, when the Board revised its governing regulations, the Board tightened the regulations governing the admission of goods subject to AD/CVD orders by requiring that the merchandise be admitted under privileged foreign status.²⁰ Prior to the 1991 regulations, on a case by case basis, the Board allowed downstream merchandise incorporating goods under AD/CVD order to be withdrawn from the zone and entered for consumption without payment of any AD/CVD duty.²¹ The 1991 regulation eliminated that discretion by mandating that all downstream merchandise incorporating goods under AD/CVD order must be required to pay the AD/CVD duty upon entry into United States commerce.²² While affirming that it is Board policy that "zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions,"²³ the Board simultaneously made clear that this

¹⁸ [

] See fn 12 above.

¹⁹ Foreign-Trade Zones in the United States, 56 Fed. Reg. 50,790 (Oct. 8, 1991) (Final Rule).

²⁰ Final Rule, 56 Fed. Reg. 50,790 (Preamble, section 400.33).

²¹ Id.

²² Id.

²³ Id.

Mr. Andrew McGilvray
October 21, 2009
Page 6

policy is consistent with allowing downstream goods for export to be withdrawn from the zone without being subject to AD/CVD duties.²⁴ This concept is further confirmed by the fact that the same practices are allowed and performed in bonded warehouses and under TIB (temporary importation under bond). AD and CVD orders are as prevalent today as they were in 1991. Opponents have raised no new arguments that would warrant reconsideration of the Board's 1991 rule making. The FTZ Board's grant of authority to MPM is based in part on a determination that manufacturing for export is in the public interest. U.S. value-added in a U.S.-based FTZ for export activity meets the public interest provisions of the FTZ Act.

Further, the Board's current regulatory framework ensures that "zone procedures shall not be used to circumvent" AD/CVD duties, in the following ways.

First, before any grant of zone authority is issued, the Board conducts a thorough vetting of the applicant. As discussed in Part I above, MPM was subjected to numerous inquiries from the Board, all of which was done in a public fashion under scrutiny from Globe.

Second, the grant of zone or subzone authority is neither permanent nor irrevocable. The Board already has a regulatory framework that allows it to ensure that manufacturing activity within a subzone is not resulting in the circumvention of AD/CVD orders. Pursuant to 15 CFR § 400.31(d)(1), ongoing zone activity "may be reviewed at anytime to determine whether it is in compliance with the Act and regulations. . . . Reviews may also be conducted to determine whether there are changed circumstances that raise questions as to whether the activity is detrimental to the public interest."²⁵ MPM's electronic filing of zone admissions (e-214 filing) allows the Board the ability to monitor MPM's zone activity through the Bureau of Census. Further, pursuant to 15 CFR § 400.31(d)(2), reviews may be initiated by the Board, the Assistant Secretary for Import Administration at the U.S. Department of Commerce, or the Executive Secretary, either on their own accord or in response to requests from parties directly affected by the activity in question.²⁶ Finally, MPM's scope of authority provides for a 5-year review. The result of these reviews can result in further restrictions on zone activity, denial of zone activity, or the lifting of a restriction if the activity is found to be in the public interest.²⁷ Therefore, if an applicant satisfies the Board through its rigorous vetting process, there is no reason to alter the presumption that an applicant is allowed to admit goods subject to AD/CVD orders into zones under privileged status and without AD/CVD duty payment unless the merchandise enters the United States for consumption. Any contrary information revealed after that grant of authority can be fully vetted under the Board's existing regulations at that time.

²⁴ Id.

²⁵ 15 CFR § 400.31(d)(1).

²⁶ 15 CFR § 400.31(d)(2).

²⁷ 15 CFR § 400.31(d)(3).

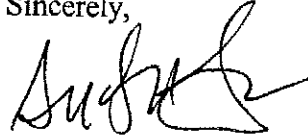
Mr. Andrew McGilvray
October 21, 2009
Page 7

PUBLIC VERSION

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We hope that this letter clarifies the erroneous assertions made during the Board's Hearing on September 1, 2009. Please contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Sydney M. Mintzer", with a stylized flourish at the end.

Sydney M. Mintzer

EXHIBIT A

MPM SAP Inventory Management System
 Summary of 2007 - 2009 Waterford Silicon Metal Supply

The following table shows amounts of silicon metal received by MPM Waterford during each of the years noted.

Year	Vendor Name	Origin	Total (kg)
2007			
2007 Total			
2008			
2008 Total			
2009			
2009 Total (YTD through 10/7/2009)			

NOTE: [